

AD. 75.
February 3, 2022.
MNS.

(Through Video Conference)

C. O. No. 3879 of 2017

(Assigned)

Hindustan Petroleum Corporation Limited
Vs.
Sri Rajpal Balmiki

Mr. Dilip Kumar Kundu

...for the petitioner.

Affidavit-of-service filed in Court today be kept on record.

Despite service, none appears on behalf of the defendant-opposite party.

The instant application under Article 227 of the Constitution of India arises against an order whereby the application of the plaintiff-petitioner under Order IX Rule 4 of the Code of Civil Procedure, registered as Miscellaneous Case No. 3204 of 2016, was dismissed by the trial court.

Upon hearing learned counsel for the petitioner and perusing the impugned order, it is seen that the trial court proceeded primarily on the basis that the plaintiff itself was at fault for having filed adjournment petitions on several occasions.

It was further recorded, however, that it appeared from the order sheet that the suit was fixed for *ex parte* hearing on several occasions due to non-appearance of

the defendant-opposite party but the plaintiff had also taken adjournment on such occasions.

In view of the nature of the suit from which the said miscellaneous case arose, being a money suit, and in view of the allegations made therein, no useful purpose could have been served for the petitioner to unnecessarily stall its own suit.

Moreover, the application for condonation of delay in filing the application under Order IX Rule 4 of the Code, of about 737 days, was itself condoned by the trial court previous to the impugned order. Since the grounds taken in the condonation application are virtually akin to those taken in the application for restoration itself, there cannot be any valid premise for the trial court to have deviated in the impugned order from the order of condonation of delay.

Furthermore, it is well-settled that courts are extremely liberal in allowing applications for restoration, more so, if the application for restoration is filed under Order IX Rule 4 of the Code, since both parties had abstained at the time of hearing of the suit.

In such view of the matter, the trial court adopted an unnecessary hyper-technical approach in dismissing the petitioner's application under Order IX Rule 4 of the Code.

Hence, C. O. No. 3879 of 2017 is allowed, thereby setting aside Order No. 35 dated February 8, 2017 passed by the Judge, Seventh Bench, City Civil

Court at Calcutta in Miscellaneous Case No. 3204 of 2016, arising out of Money Suit No. 193 of 2006.

The said money suit stands, accordingly, restored to its original file and number. The trial court shall now proceed with the hearing of the suit from the stage at which it was left at the time of dismissal for delay.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)